

General Information Letter: Illinois law generally requires withholding only when withholding is required for federal income tax purposes.

September 28, 2001

Dear:

This is in response to your letter dated September 15, 2001 in which you request that we complete your annual survey on withholding and reporting requirements for employer-sponsored retirement plan payments.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

We have reviewed your survey. The applicable survey questions are reproduced, and the Department's answers are given below.

Reporting on Retirement Plan Payments

Question 1. Reporting on employer-sponsored retirement plan payments can be described as follows:

Response: Illinois does not require reporting on information returns for employee-sponsored retirement plan payments.

Questions 2 through 10 are inapplicable given our response to question #1.

Withholding From Retirement Plan Payments

Question 1. Does your state allow withholding from retirement plan payments?

Response: Retirement plan payments from federal tax-qualified plans are not subject to withholding in Illinois.

An individual's Illinois net income subject to Illinois income taxation is that individual's base income as modified. See Section 202 of the Illinois Income Tax Act ("IITA"); 35 ILCS 5/101 *et. seq.*). An individual's base income is that individual's federal adjusted gross income subject to certain statutory addition and subtraction modifications. See IITA Section 203. A subtraction modification under IITA Section 203(a)(2)(F) states:

An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto.

Therefore, amounts of income which an individual receives as distributions from a plan that is tax-qualified under the Internal Revenue Code will not be subject to Illinois income taxation. Since such amounts escape Illinois income taxation, the IITA imposes no obligation on employers to withhold tax from either contributions or distributions. However, the payor and the payee may voluntarily agree to have Illinois income taxes withheld from retirement plan payments. Regulations under 86 Ill. Admin. Code Section 100.7070 provide for voluntary withholding from otherwise exempt payments. Copies of Sections 100.7070 and 100.7060, which contain details on the form voluntary withholding agreements must take, are enclosed for your reference.

Conversely, amounts included in an individual's federal adjusted gross income as distributions from a retirement plan that is not tax-qualified under the Internal Revenue Code are subject to Illinois income taxation. Those amounts are subject to Illinois withholding if they are also subject to federal withholding. See IITA Section 701(a). The formula for computing the correct amount to withhold is set forth in IITA Section 701(a)(2), which is enclosed for your reference.

Questions 2 through 9 have been answered by the response to Question 1.

Possible Withholding Requirement Changes for tax year 2002

Question: Are you aware of any possible withholding requirement changes for your state for tax year 2002?

Response: The Department is not aware of any pending changes in the withholding requirements for tax year 2002.

We hope that our answers were sufficiently responsive to your inquiries.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
Staff Attorney -- Income Tax